HON'BLE SRI JUSTICE B. PRAKASH RAO

HON'BLE SRI JUSTICE G. BHAVANI PRASAD

WRIT PETITION No.5637 of 2003

Between:

A. Venkanna … Petitioner

and

Sr. Accounts Officer (A&G), Pay and Accounts Officer (Ors), EME, Secunderabad and two others … Respondents

DATE: -08-2006

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ORDER: (Per G. Bhavani Prasad, J)

The unsuccessful applicant before the Central Administrative Tribunal, Hyderabad Bench in O.A. No.1424 of 2000 and R.A. No.5 of 2003 filed the writ petition to set aside the orders dated

30-10-2002 and 13-01-2003 respectively and for recasting his seniority by confirmation from 01-07-1971, for consequential promotion from the date of promotion of his immediate junior with monetary benefits with interest at 12 per cent per annum till the date of payment, recovering the amount of interest from the person or persons responsible for the litigation.

The petitioner's case is that he joined as Upper Division Clerk with respondents on 13-01-1964 and retired as Senior Auditor in the first respondent office. He completed his normal period of probation in 1966 and acquired eligibility for promotion to UDC selection grade in 1978 on completion of 14 years of service. He waited to come within the zone of consideration of 75 : 25 ratio between UDC and UDC selection grade. The seniority list was never circulated and only in 1987 the petitioner came to know that his junior was promoted, on which he submitted a representation. He was informed that his turn did not yet mature and he filed O.A. No.963 of 1999 for fixation of seniority and

promotion to the selection grade. The Central Administrative Tribunal ordered on 10-4-2000 to consider the representation of the petitioner within three months. On his representation dated 24-4-2000, the respondents passed an order of rejection on 27-07-2000 stating that Bhagwan and he were confirmed on 01-07-1971 and 01-07-1973 respectively and they cannot be compared. There is no rule for taking into account three annual confidential reports to determine the suitability for confirmation and even otherwise it has to be an overall assessment for the entire period. However, the petitioner was not found fit for being confirmed on the strength of his adverse annual confidential report for 1970 out of the reports for 1968, 1969 and 1970. They considered the annual confidential reports of 1967, 1968 and 1969 in the case of Bhagwan appointed as UDC on 27-12-1963, thus, considering two different sets of confidential reports for similarly placed persons. Ultimately the petitioner was confirmed on

01-07-1973 and Bhagwan was confirmed on 01-12-1973, five months thereafter and when his date of confirmation was advanced to 01-07-1971 was unsubstantiated in the absence of any document. In fact, the representation of Bhagwan on 30-10-1995 to confirm him on an earlier date was disposed of by a letter dated 30-01-1996. The petitioner suffered a loss of about Rs.600/- per month in pay and a net loss of Rs.750/- to Rs.1,000/- per month resulting in lesser pension. He filed O.A. No.1424 of 2000 questioning the order dated 27-7-2000 and on its dismissal on 30-10-2002 he filed R.A. No.5 of 2003 for review, which was dismissed in circulation on 13-01-2003. Hence, the writ petition.

The respondents' case is that the petitioner appointed as a

direct recruit UDC on 13-01-1964 was made quasi permanent with effect from 13-01-1967 and was confirmed with effect from 01-07-1973. The departmental promotion committee held in July, 1971 found the petitioner not yet fit for confirmation on considering the annual confidential reports for 1968, 1969 and 1970 as the last report was adverse. He was again not considered as fit at the time of review departmental promotion committee in 1972 and was finally considered fit by review departmental promotion committee in April, 1973. Individuals appointed between 01-05-1963 and 31-12-1963 were considered for confirmation with effect from 01-07-1971 and individuals appointed between 01-01-1964 and 31-12-1964 were considered for confirmation with effect from 01-12-1971. Bhagwan appointed on 17-12-1963 earlier to the petitioner was initially confirmed with effect from 01-07-1971 based on the annual confidential reports for 1967, 1968 and 1969, but his confirmation could not be notified by CDA-SC, Pune as the annual confidential report for 1970 was adverse. His confirmation was reviewed during 1972-73, but he could not be considered fit as his annual confidential reports for 1970 and 1971 were adverse. In 1974 the review departmental promotion committee declared him fit and he was confirmed with effect from 01-12-1973. On his representation, CGDA, New Delhi considered to confirm him with effect from 01-07-1971 by a letter dated 26-6-1996 based on the instructions contained in the Circular letter No.AN/XII/12201/0/3/VOL.II, dated 24-09-1984 and he was promoted to SGA's grade with effect from 20-01-1981 vide office order dated 04-10-1996. As seniority shall follow the date of confirmation and not the original order of merit,

the petitioner's contention is incorrect and Bhagwan is senior to him by virtue of his appointment as well as confirmation. The petitioner's representations were, hence, not considered and the Central Administrative Tribunal rightly dismissed the petitions. The writ petition is, thus, devoid of merits.

The learned advocate for the petitioner strenuously contended that the petitioner was unjustly discriminated against and the same circular instructions dated 24-09-1984 apply to him with equal force entitling him to ante-dating the confirmation to 01-07-1971. Revising seniority of Bhagwan without notice to the petitioner affected thereby is blatant violation of principles of natural justice.

The learned counsel for the respondents submitted that the cases of Bhagwan and the petitioner are not comparable and in any view the petition without impleading Bhagwan and other persons affected by any restoration of seniority to the petitioner, is not maintainable.

Adverting to the plea that the writ petition is not maintainable without the presence of Bhagwan and any others whose seniority is likely to be affected, if the petitioner's request were to be accepted, it is to be noted that the same objection was taken in the reply statement filed on behalf of respondents in O.A. No.1424 of 2000 and the petitioner in his rejoinder had clearly stated that juniors to the applicant had already retired and their interests are no way affected by extending the same benefit to him, as was given to Bhagwan. The impugned order in O.A. No.1424 of 2000 noted the contention but gave no finding on this aspect. The claim that Bhagwan and others, over whom the

petitioner is attempting to ascend, retired on attaining their respective ages of superannuation like the petitioner, is not factually in dispute and if so, any relief which may be granted to the petitioner will not prejudice any such person in any manner. It is not for the respondents who never kept the petitioner informed of representation of Bhagwan or the orders thereon in spite of the petitioner being adversely affected while in service by the confirmation of Bhagwan being ante-dated anterior to his confirmation, to suddenly remember the holy principles of natural justice being violated by the petitioner. The ultimate relief to him can only be monetary herein without even remotely touching upon adversely the rights and interests of any other erstwhile employee of the respondents including Bhagwan. Hence, non-joinder of necessary parties vitiating the petition is not a sustainable defence.

The respondents opposed the petitioner's request also on grounds of laches and limitation. But it is seen from the record that right from the moment of his knowledge of his junior being promoted earlier, the petitioner was repeatedly representing to the respondents at various levels for redressal of his grievance, in vain. Ultimately, the Central Administrative Tribunal directed consideration of his representation by order dated 10-04-2000 in O.A. No.963 of 1999 and soon after rejection of his representation by order dated 27-07-2000, the petitioner filed O.A. No.1424 of 2000. The petitioner was neither guilty of laches nor can the petition be considered to be defeated by delay or limitation under the circumstances.

The representations of Bhagwan to the higher ups and the

ultimate acceptance of such request by letter No.AN/XII/12061/V/90 dated 26-06-1996 were admittedly behind the back of the petitioner, though he (and maybe others) were adversely affected by ante-dating the confirmation of Bhagwan from 01-12-1973 to 01-07-1971, as seniority shall follow the date of confirmation. The absence of any notice and opportunity of hearing to the petitioner before revising the date of confirmation of Bhagwan was in obvious disregard of sacrosanct principles of natural justice. The petitioner is eminently justified in requesting to be treated on par with Bhagwan, while in all fairness not seeking to disturb the benefit conferred on Bhagwan or any other person.

The sole reason for the respondents acceding to the representation of Bhagwan, was the circular instructions contained in No.AN/XII/12201/0/3/VOL.II, dated 24-09-1984. It was specifically noticed therein that notification of promotion/confirmation was withheld in several cases for the reason that the subsequent annual confidential reports were adverse for various reasons even though his integrity has been certified. Therefore, it was decided to notify the promotions/confirmations, provided that nothing adverse regarding the integrity of the affected individual has come to notice since last adjudication and that no disciplinary action is pending and also no vigilance case is in progress against the individual. It may be due to the satisfaction of these conditions that the confirmation of Bhagwan was ante-dated under letter dated 26-06-1996. But the petitioner also should have received the same treatment, if not earlier, at least when his representation was considered in obedience to the directions of the Central Administrative Tribunal

in O.A. No.963 of 1999. Though the annual confidential report of the petitioner for 1970 was said to be adverse, it is not claimed to be containing anything adverse regarding his integrity. It is also not claimed that any disciplinary action or vigilance case was even initiated against him, leave alone pending at any time. In fact, the petitioner specifically averred in the rejoinder in O.A. No.1424 of 2000 that no disciplinary proceedings were pending against him and his integrity was not in dispute, which is not denied by the respondents. When any adversity in the subsequent annual confidential reports for various reasons even though the integrity of the employee has been certified, was made irrelevant for notification of promotion/confirmation by the circular dated 24-09-1984, adverse report of 1970 could not have stood in the way of the petitioner's confirmation being ante-dated like that of Bhagwan. In fact, the respondents themselves state the adverse annual confidential reports of Bhagwan to be for two years, 1970 and 1971, while the adverse annual confidential report of the petitioner was only for one year, 1970, but the former was given a better treatment than the latter for reasons best known to the respondents. The respondents who considered to review their decision of 1974, in 1996 in respect of Bhagwan, strangely accused the petitioner of laches, delay and limitation in spite of his representations since 1987 and they did not explain how the circular dated 24-09-1984 is inapplicable to the petitioner. In fact, the letter dated 26-06-1996 and the consequential office order dated 16-07-1996 ante-dating the confirmation of Bhagwan and the office order dated 04-10-1996 promoting him as selection grade auditor retrospectively with effect from 20-01-1981 did not see the

light of the day till their copies were filed along with the counter affidavit in this writ petition.

The Central Administrative Tribunal in the impugned order straight away reproduced the contentions of the respondents and felt unconvinced that the petitioner stands on par with Bhagwan and failed to appreciate how the petitioner can seek the relief claimed. However, the unequal and unjust treatment meted out to the petitioner in comparison with Bhagwan is patent and his grievance should have been redressed on an objective analysis of the admitted facts.

The statement of the respondents in their counter affidavit that individuals appointed between 01-05-1963 and 31-12-1963 were considered for confirmation with effect from 01-07-1971 and individuals appointed between 01-01-1964 to 31-12-1964 were considered for confirmation with effect from 01-12-1971, indicates, of course, that the petitioner may be entitled to request for ante-dating his confirmation to 01-12-1971 only and not 01-07-1971.

For the foregoing reasons, the impugned orders of the Central Administrative Tribunal need to be set aside and the proceedings of the first respondent dated 27-7-2000 need to be held arbitrary and illegal. Consequentially, the respondents should be called upon to recast the seniority of the petitioner by ante-dating his confirmation to the date on which his immediate junior was confirmed, which at any rate should not be beyond 01-12-1971 and to extend all consequential benefits of notional promotion with retrospective effect from the date of promotion of his immediate junior and the attendant monetary benefits.

With regard to the claim for interest on such sums from the

due dates till the dates of payment, no provision of law entitles the petitioner to such interest. Though not due to his fault, he did not actually perform the duties of higher positions while in service. The deprivation of the benefits to which he is rightly entitled may be unfortunate but cannot be attributed to mala fides of any official in the organization in the absence of any such allegation or proof. Under the circumstances, it may not be appropriate to exercise any judicial discretion in favour of grant of any interest or making any person or persons in the organization of the respondents responsible for the same or to award any exemplary costs.

In the result, the writ petition is allowed without costs and the order of Central Administrative Tribunal, Hyderabad Bench in O.A. No.1424 of 2000 dated 30-10-2002 and its further order dated 13-01-2003 in R.A. No.5 of 2003 as well as the order of the first respondent in letter No.AN/70/Vol.V, dated 27-07-2000 are set aside. The respondents shall recast the seniority of the petitioner by ante-dating his date of confirmation to the date on which his immediate junior was confirmed, which at any rate should not be beyond 01-12-1971 and extend all consequential benefits of notional promotion with retrospective effect from the date of promotion of his immediate junior and the attendant monetary benefits, within two months from the date of this order.

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B. PRAKASH RAO, J

Date: -08-2006

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G. BHAVANI PRASAD, J

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